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Security Council

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Letter dated 23 May 2012 from the Secretary-General addressed to the President of the Security Council

I have the honour to convey the Application on behalf of the Government of Libya pursuant to Article 19 of the Statute of the International Criminal Court (the Application)* and the Decision on the Conduct of the Proceedings Following the "Application on behalf of the Government of Libya pursuant to Article 19 of the Statute" (the Decision) in relation to the case of *The Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, as transmitted to me by the Registrar of the Court (see annex).

Pre-Trial Chamber I issued the Decision on 4 May 2012, noting, in accordance with article 19 (3) of the Rome Statute and rules 59 (1) and (3) of the Rules of Procedure and Evidence, that the Security Council may submit observations on the Application by 4 June 2012.

The Registrar, pursuant to article 17 (1) of the Negotiated Relationship Agreement between the International Criminal Court and the United Nations, submits the Decision and Application of the Government of Libya and its annexes for onward transmission to the Security Council.

(*Signed*) BAN Ki-moon

* On file with the Secretariat and available for consultation.

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Annex

I have the honour to transmit hereby two documents for onward transmission to the United Nations Security Council in the case of *The Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*:

(a) The "Application on behalf of the Government of Libya pursuant to Article 19 of the Statute" (ICC-01/11-01/11-130-Red) dated 1 May 2012, and its public annexes A, B, G, H, J, K;*

(b) The Decision on the Conduct of the Proceedings Following the "Application on behalf of the Government of Libya pursuant to Article 19 of the Statute" (ICC-01/11-01/11-134) issued by Pre-Trial Chamber 1 on 4 May 2012 (the Decision) (see enclosure).

The documents are transmitted in accordance with rules 59 (1) and 59 (2) of the Rules of Procedure and Evidence, article 17 (1) of the Negotiated Relationship Agreement between the International Criminal Court and the United Nations and pursuant to the Decision issued on 4 May 2012.

I would like to draw your attention to the fact that the Chamber invited the Security Council to submit its observations on the admissibility challenge by 4 June 2012.

Should the relevant staff of the United Nations have any questions, or for transmission of the above-mentioned observations, they are invited to contact Mr. Alexander Khodakov, Special Adviser to the Registrar on External Relations and Cooperation, by e-mail (alexander.khodakov@icc-cpi.int) or by telephone (+31 70 515 8662) and Ms. Anne-Aurore Bertrand, Cooperation Adviser, Office of the Registrar, by e-mail (anneaurore.bertrand@icc-cpi.int) or by telephone (+31 70 515 8202).

(*Signed*) Silvana **Arbia**
Registrar

* On file with the Secretariat and available for consultation.

Enclosure

Cour Pénale Internationale

International Criminal Court

Original: **English**

No.: **ICC-01/11-01/11**
Date: 4 May 2012

PRE-TRIAL CHAMBER I

Before: **Judge Silvia Fernández de Gurmendi, Presiding Judge**
Judge Hans-Peter Kaul
Judge Christine Van den Wyngaert

SITUATION IN LIBYA

IN THE CASE OF
THE PROSECUTOR v.
SAIF AL-ISLAM GADDAFI and ABDULLAH AL-SENUSSI

Public

Decision on the Conduct of the Proceedings Following the "Application on behalf of the Government of Libya pursuant to Article 19 of the Statute"

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor
Luis Moreno-Ocampo
Fatou Bensouda

Counsel for the Defence
Xavier-Jean Keïta
Melinda Taylor

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims
Paolina Massidda

The Office of Public Counsel for the Defence

States Representatives
Philippe Sands
Payam Akhavan
Michelle Butler

Amicus Curiae

REGISTRY

Registrar
Silvana Arbia

Deputy Registrar
Didier Preira

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section
Fiona McKay

Others

Pre-Trial Chamber I ("Chamber") of the International Criminal Court ("Court") issues the following decision on the conduct of the proceedings following the "Application on behalf of the Government of Libya pursuant to Article 19 of the Statute" ("Article 19 Application").[1]

I. Procedural History

1. On 26 February 2011, the United Nations Security Council ("Security Council") adopted Resolution 1970,[2] whereby the Security Council referred to the Prosecutor the situation in the Libyan Arab Jamahiriya since 15 February 2011.[3]

2. On 27 June 2011, the Chamber issued warrants of arrest against, *inter alia*, Saif Al-Islam Gaddafi ("Mr Gaddafi") and Abdullah Al-Senussi ("Mr Al-Senussi").[4] On 5 July 2011, the Registrar notified the Libyan authorities of a request for cooperation asking for their assistance in arresting, *inter alia*, Mr Gaddafi and Mr Al-Senussi and surrendering them to the Court ("Surrender Request").[5]

3. On 23 November 2011, a letter from the National Transitional Council was transmitted to the Chamber. The official English translation of this letter was formally put into the case record six days later.[6] This letter confirmed the arrest of Mr Gaddafi on 19 November 2011 in Libya, where Mr Gaddafi has been detained since.

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[1] ICC-01/11-01/11-130-Conf with annexes. A public redacted version is also available (ICC-01/11-01/11-130-Red).
[2] S/RES/1970 (2011).
[3] S/RES/1970, paragraph 4.
[4] Warrant of Arrest for Saif Al-Islam Gaddafi, ICC-01/11-01/11-3; Warrant of Arrest for Abdullah Al-Senussi, ICC-01/11-01/11-4.
[5] ICC-01/11-01/11-5 and ICC-01/11-01/11-25-Conf.
[6] ICC-01/11-01/11-34 with annex.

4. On 17 April 2012, the Chamber appointed counsel from the Office of Public Counsel for the defence ("OPCD") as Mr Gaddafi's counsel pursuant to regulation 76(2) of the Regulations of the Court ("Regulations").[7]

5. On 1 May 2012, the Government of Libya ("Libya") filed the Article 19 Application, wherein it requests that the Chamber: (i) postpone execution of the Surrender Request pursuant to article 95 of the Rome Statute ("Statute") ("Postponement Request") and (ii) declare the case inadmissible and quash the Surrender Request ("Admissibility Challenge").[8] Libya's principal submission is to challenge the admissibility of the case against Mr Gaddafi only, arguing in the alternative that the Article 19 Application extends to both Mr Gaddafi and Mr Al-Senussi's cases.[9]

6. On 2 May 2012, Libya filed the "Motion on Behalf of the Government of Libya Requesting an Oral Hearing in Respect of its Admissibility Challenge Pursuant to Article 19 of the Statute", requesting that the Chamber conduct an oral hearing on the Article 19 Application.[10]

II. Applicable Law and Findings of the Chamber

7. The Chamber has considered article 19 of the Statute, rules 58 and 59 of the Rules of Procedure and Evidence ("Rules"), and regulations 34 and 80 of the Regulations.

8. As a preliminary matter, the Chamber has considered Libya's submissions as to the scope of the Article 19 Application and considers that it must be understood to only concern the case against Mr Gaddafi.[11]

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[7] ICC-01/11-01/11-113.
[8] Article 19 Application, paragraphs 107-108.
[9] Article 19 Application, paragraphs 73-74.
[10] ICC-01/11-01/11-132.
[11] Article 19 Application, paragraph 73. *See also Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Trial Chamber II, Oral Decision of Trial Chamber II of 12 June 2009 on the

Accordingly, the Chamber will not consider the admissibility of the case against Mr Al-Senussi in resolving the Article 19 Application.

9. As to the Postponement Request, the Chamber considers that it concerns a distinct issue which should be decided separately from the Admissibility Challenge. In this regard, the Chamber considers it necessary to shorten, pursuant to regulation 34 of the Regulations, the time limits for the responses of the Prosecutor and the OPCD to this particular request.

10. Turning to the Admissibility Challenge, the Chamber observes as a preliminary point that it has, by virtue of rule 58(2) of the Rules, the discretionary power to decide on the procedure to be followed.

11. Despite this broad discretion, the Chamber *shall* allow, pursuant to rule 58(3) of the Rules, the Prosecutor and "the person referred to in article 19, paragraph 2, who has been surrendered to the Court or who has appeared voluntarily or pursuant to a summons" to submit written observations to challenges made pursuant to article 19(2) of the Statute. The Chamber notes in this respect that Mr Gaddafi, although arrested in Libya, has so far not been surrendered to or appeared before the Court. However, consistent with its previously expressed position, [12] the Chamber takes the view that Mr Gaddafi's exercise of procedural rights in relation to the Admissibility Challenge cannot be made contingent on Libya's compliance with the Surrender Request. As counsel for Mr Gaddafi, the OPCD shall accordingly be allowed to submit written observations. Finally, in line with rule 58(3) of the Rules, an appropriate time limit for the submission of any observations by the Prosecutor and the OPCD must be set.

Admissibility of the Case, 12 June 2009, ICC-01/04-01/07-T-67-ENG (Trial Chamber considered an admissibility challenge brought by only one of two co-accused).

[12] Pre-Trial Chamber I, Decision on OPCD Requests, 27 April 2012, ICC-01/11-01/11-129, paragraph 11.

12. The Chamber further notes that, pursuant to article 19(3) of the Statute read in conjunction with rule 59(1) and (3) of the Rules, the Security Council, as well as victims who have already communicated with the Court in relation to this case or their legal representatives, may also submit observations within a time limit that the Chamber considers appropriate.

13. In order to conduct the proceedings efficiently and exp ditiously, the Chamber considers that it is appropriate for the pr ceedings relating to the Admissibility Challenge to appoint, under regulation 80 of the Regulations, Paolina Massidda from the Office of Public Counsel for victims ("OPCV") to represent the victims who have communicated with the Court in relation to the case. The Registrar is hereby instructed to provide the OPCV with information about victims who have communicated with the Court, as well as with any necessary assistance to contact the victim applicants as soon as possible.

14. Rule 59(2) of the Rules mandates that the Registrar provide the Security Council and the victims, in a manner consistent with the duty of the Court regarding the confidentiality of information, the protection of any person and the preservation of evidence, with a summary of the grounds on which the jurisdiction of the Court or the admissibility of the case has been challenged. The Chamber is of the view that this rule will be satisfied if the Security Council and the OPCV are notified of the public redacted version of the Article 19 Application, together with its public annexes, which are currently available in the record of the case.

15. The Chamber may decide to hold a hearing pursuant to rule 58(2) of the Rules and takes note of Libya's request to this effect. Following the receipt of written observations within the time limit set by the present decision, the Chamber will determine whether a hearing is necessary for the proper

determination of the Admissibility Challenge and will, if appropriate, establish the date and agenda of such hearing.

FOR THESE REASONS, THE CHAMBER

INVITES the Prosecutor and the OPCD to submit their responses to the Postponement Request, if any, no later than **11 May 2012**;

APPOINTS, for the purpose of the proceedings following the Admissibility Challenge, Paolina Massidda from the OPCV as legal representative of victims who have already communicated with the Court in relation to the case;

INSTRUCTS the Registrar to provide the OPCV with information about victims who have communicated with the Court, as well as with any necessary assistance to contact the victim applicants as soon as possible;

ORDERS the Registrar to notify document ICC-01/11-01/11-130-Red, together with its public annexes, to the Security Council and the OPCV;

INVITES the Prosecutor, the OPCD, the Security Council and the OPCV to submit observations on the Admissibility Challenge, if any, no later than **4 June 2012**; and

ORDERS the Registrar to notify the present decision to the Security Council.

No. **ICC-01/11-01/11** **4 May 2012**

Done in both English and French, the English version being authoritative.

Judge Silvia Fernández de Gurmendi
Presiding Judge

Judge Hans-Peter Kaul **Judge Christine Van den Wyngaert**

Dated this Friday, 4 May 2012

At The Hague, The Netherlands